APPEAL NO. 161780
FILED OCTOBER 18, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on July 18, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the compensable injury of (date of injury), extends to L4-5 protrusion/herniation, L5-S1 protrusion/herniation, lumbar radiculitis and lumbar radiculopathy; that the respondent (claimant) has not reached maximum medical improvement (MMI) and, for such reason, the issue of impairment rating (IR) is not ripe for adjudication; and that the claimant had disability from September 18, 2015 through the date of the hearing resulting from the compensable injury of (date of injury).

The appellant (carrier) appealed the hearing officer's decision arguing that each of her determinations is contrary to the great weight and preponderance of the evidence. The claimant responded to the carrier's appeal, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant was injured on (date of injury), when he turned to untangle a compressor hose, twisting his back. The parties stipulated that the claimant sustained a compensable injury in the form of a lumbar sprain/strain.

EXTENT OF INJURY

That portion of the hearing officer's determination that the compensable injury of (date of injury), extends to an L4-5 protrusion/herniation, an L5-S1 protrusion/herniation and lumbar radiculopathy is supported by sufficient evidence and is affirmed. The fact that another fact finder may have drawn different inferences from the evidence which would have supported a different result does not provide a basis for us to disturb the challenged determination. *Salazar v. Hill*, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi, 1977, writ ref'd n.r.e.).

The hearing officer also determined that the (date of injury), compensable injury extends to lumbar radiculitis.

The Texas courts have long established the general rule that "expert testimony is necessary to establish causation as to medical conditions outside the common knowledge and experience" of the fact finder. *Guevara v. Ferrer*, 247 S.W.3d 662 (Tex. 2007). The Appeals Panel has previously held that proof of causation must be

established to a reasonable medical probability by expert evidence where the subject is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Appeals Panel Decision (APD) 022301, decided October 23, 2002. *See also City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing *Guevara*.

The condition of lumbar radiculitis is a condition that requires expert evidence to establish a causal connection with the compensable injury. *See* APD 132361, decided December 6, 2013.

The claimant relies upon the opinion of (Dr. M), appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor, who examined the claimant on February 9, 2016, for the purpose of addressing extent of the compensable injury. In his Designated Doctor Examination Data Report (DWC-68) dated February 17, 2016, Dr. M checked the "yes" box under Section 16 indicating his opinion that the compensable injury extended to lumbar radiculitis. In his accompanying narrative report; however, Dr. M did not specifically discuss lumbar radiculitis or how the compensable injury caused lumbar radiculitis.

Also in evidence are records from (Dr. T), (Dr. S) and (Dr. C) which list an impression or diagnosis of lumbar radiculitis, among other conditions. However, none of these doctors explain how the compensable injury caused lumbar radiculitis. The Appeals Panel has held that the mere recitation of the claimed conditions in the medical records without attendant explanation of how those conditions may be related to the compensable injury does not establish those conditions are related to the compensable injury within a reasonable degree of medical probability. APD 110054, decided March 21, 2011.

As there are no medical records, including the records from Dr. M, Dr. T, Dr. S and Dr. C, that explain how the (date of injury), compensable injury caused lumbar radiculitis, that portion of the hearing officer's determination that the (date of injury), compensable injury extends to lumbar radiculitis is against the great weight and preponderance of the evidence. Accordingly, we reverse that portion of the hearing officer's determination that the (date of injury), compensable injury extends to lumbar radiculitis, and render a new decision that the (date of injury), compensable injury does not extend to lumbar radiculitis.

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that

the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.123(a) provides that after an employee has been certified by a doctor as having reached MMI, the certifying doctor shall evaluate the condition of the employee and assign an IR. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The hearing officer based her decision that the claimant had not attained MMI on the certification of Dr. M, who examined the claimant on May 17, 2016, and determined that the claimant had not reached MMI with regard to the disputed conditions. In his report dated May 25, 2016, Dr. M stated that the claimant had not reached MMI because he has not yet undergone epidural steroid injections which have been recommended by his doctors and which meet the criteria set out in the Official Disability Guidelines-Treatment in Workers' Compensation published by Work Loss Data Institute for treatment of his lumbar protrusions/herniations and radiculopathy.

Because we have affirmed the hearing officer's decision that the compensable injury extends to lumbar radiculopathy and protrusions/herniations at L4-5 and L5-S1 and because the medical evidence supports that further treatment for the compensable lumbar radiculopathy and protrusions/herniations at L4-5 and L5-S1 has been recommended and that further material recovery can reasonably be anticipated, the hearing officer's determinations that the claimant had not reached MMI, and that no IR may be assigned since the date of MMI has not yet been determined are supported by sufficient evidence and are affirmed.

DISABILITY

The hearing officer's determination that the claimant had disability from September 18, 2015, through the date of the CCH resulting from the compensable injury of (date of injury), is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm that portion of the hearing officer's determination that the compensable injury of (date of injury), extends to an L4-5 protrusion/herniation, an L5-S1 protrusion/herniation and lumbar radiculopathy.

We reverse that portion of the hearing officer's determination that the compensable injury of (date of injury), extends to lumbar radiculitis and render a new

decision that the compensable injury of (date of injury), does not extend to lumbar radiculitis.

We affirm the hearing officer's determination that the claimant has not reached MMI.

We affirm the hearing officer's determination that since the claimant has not reached MMI, the issue of IR is not ripe for adjudication.

We affirm the hearing officer's determination that the claimant had disability from September 18, 2015, through the date of the CCH resulting from the compensable injury of (date of injury).

The true corporate name of the insurance carrier is **TOKIO MARINE AMERICA INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge